



ORGANIZATION FOR THE PROTECTION
AND ADVANCEMENT OF SMALL
TELEPHONE COMPANIES

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Geographic Partitioning and Spectrum
Disaggregation by Commercial Mobile
Radio Services Licensees

Implementation of Section 257 of the
Communications Act -
Elimination of Market Entry Barriers

WT Docket No. 96-148

GN Docket No. 96-113

COMMENTS OF
THE ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES

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I. INTRODUCTION

On July 15, 1996, the Federal Communications Commission (FCC or Commission) released the text of a Notice of Proposed Rulemaking¹ regarding the matter of geographic partitioning and spectrum disaggregation by Commercial Mobile Radio Services (CMRS) licensees. The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits its comments in response to the Commission's NPRM.

¹In the Matter of Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees, WT Docket No. 96-148, Implementation of Section 257 of the Communications Act - Elimination of Market Entry Barriers, GN Docket No. 96-113, Notice of Proposed Rulemaking, 61 FR 38693 (July 25, 1996). (NPRM)

OPASTCO is a national trade association of more than 450 independently owned and operated telephone companies serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over two million customers with both wireline and wireless technologies. OPASTCO members are committed to offering their customers the wireless technology that they demand, and many members have based their long-range strategic plans on the availability of partitioned personal communications services (PCS) spectrum in their rural areas. Accordingly, OPASTCO has a paramount interest in this proceeding.

II. BROADENING THE PARTITIONING PROVISIONS WOULD EFFECTIVELY EXCLUDE RURAL TELEPHONE COMPANIES FROM MEANINGFUL PARTICIPATION IN THE COMPETITIVE BIDDING PROCESS

Congress clearly intended that rural areas of the country should enjoy the benefits of PCS when it stated in Section 309(j) (3) (A) of the Communications Act, as amended, the need for "the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays."² The Commission wisely recognized this when it was developing its competitive bidding rules allowing rural telephone companies the exclusive right to receive a partitioned license in order to avoid "competition from 'deep pocket' bidders."³ Now,

²47 U.S.C. Section 309(j) (3) (A)

³In the Matter of Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253 at para. 110 (Released November 23, 1994).

in the current NPRM, the Commission prudently asks "whether liberalizing the geographic partitioning rules would lessen rural telcos' ability to participate in the provision of broadband PCS."⁴ OPASTCO strongly believes that such liberalizing will hamper rural telco participation and allow "deep pockets" to financially overwhelm small, rural telephone companies, possibly depriving these areas of any PCS service at all.

Due to the fact that many "designated entities" in the "C" block auction were backed by larger, more lucrative entities, many OPASTCO members were effectively denied a right to participate because of a comparative lack of capital. The overwhelming majority of OPASTCO members that attempted to bid for PCS spectrum were rebuffed by the unexpectedly, even by FCC estimates, high bids. Thus, most small telephone companies soon established that they simply did not have the financial strength to participate in the auctions. Having been rebuffed, many of these small, rural telephone companies are relying or have relied upon the exclusive right to partition their areas in order to provide PCS to their customers. Now the Commission is considering the removal of their exclusive right, and many rural telcos fear a repeat of the "C" block auction. Thus, if history were to repeat itself, broadening the partitioning provisions would once again deny many rural telephone companies a "viable opportunity for these entities to successfully acquire PCS

⁴NPRM at para 17.

licenses and offer service to rural areas."⁵

The Commission states in the NPRM that it is considering broadening the partitioning provisions because of the "requirements of Section 257 of the Telecommunications Act of 1996"⁶ eliminating market entry barriers and, in accordance with Section 309(j)(4)(C)(ii), to allow participation by "a wide variety of applicants including small businesses, rural telcos, and businesses owned by minority groups and women."⁷ Unfortunately, the Commission's well-intentioned proposal may have the unintended effect of excluding rural telcos from meaningful participation in the PCS process. Ironically, by broadening the partitioning process, the Commission may actually be erecting a market barrier to rural telcos, unable to compete with the deep pockets of the other entities' backers. This result would be inconsistent with the Congressional intent to encourage participation by rural local exchange carriers (LECs).

Bidding by entities with financial support from non-controlling investors led to extremely high bids that were impossible for small LECs to meet, let alone exceed. Additionally, non-rural entities will also have the same "deep pocket" advantage over rural telcos in the upcoming "F" block auctions. OPASTCO believes that the partitioning rules should not be broadened and should remain as is, in order to allow

⁵See Fifth Report and Order, FCC 94-178 at paras. 148-153.

⁶NPRM at para. 20.

⁷NPRM at para. 21.

effective representation by rural telephone companies in the PCS arena. The other entities have had, (in the "C" block) and will have (in the "F" block), ample opportunity to gain PCS spectrum. Keeping the exclusive right of rural telephone companies to partition spectrum could be the best chance the Commission has to fulfill the Congressional intent of ensuring that "competitive bidding methodologies have secured prompt delivery of service to rural areas and have adequately addressed the needs of rural spectrum users."⁸ Rural telephone companies are in the best position to serve all rural spectrum users and should have the first chance to do so.

III. BROADENING THE PARTITIONING PROVISIONS WILL IMPEDE THE DEPLOYMENT OF PCS TECHNOLOGY IN RURAL AREAS AND IS CONTRARY TO THE PUBLIC INTEREST

The Commission states that "[p]ersonal communications requirements are changing rapidly as our society becomes more mobile and the demand for near instantaneous communications and universal access increases."⁹ Universal access is clearly in the public interest. Rural telephone companies are the crucial element in providing this universal access. The construction requirements¹⁰ that the Commission mandates are evidence of its attempt to have a universal, ubiquitous, and nationwide system of mobile communications. Accordingly, and as Congress intended, rural telephone companies must have fair access to PCS spectrum.

⁸47 U.S.C. Section 309(j) (12) (D) (iii)

⁹NPRM at para. 40.

¹⁰NPRM at paras. 31-35.

Regrettably, if rural telcos lose their exclusive right to partition, they could, once again, lose out to other entities backed by non-controlling interests. The inability of rural LECs to have access to this spectrum means that the rural customer loses. Many entities will not have the same incentive and commitment that rural telephone companies have to serve less profitable, remote rural areas, thus leaving large gaps in mobile services.

Rural telephone companies have historically demonstrated a commitment and responsibility in serving their respective areas.¹¹ More importantly, rural telephone companies have a more robust economic incentive to serve their own areas, including those less profitable, more remote areas. The FCC observes "that rural telcos can build upon their existing infrastructure to rapidly deploy PCS, and thus are more likely to be interested in providing PCS to rural areas."¹² By augmenting new wireless technology with its own wireline facilities, a rural telco, unlike any other entity, can more easily offer PCS service to even the most distant and isolated farms and residences.

While the minimum construction requirements are helpful in ensuring universal access, they cannot ensure construction in rural areas. A non-rural entity that partitions an area could meet the five and ten year construction requirements without ever

¹¹Distance learning and telemedicine are trademarks of rural LEC participation and concern within their communities.

¹²NPRM at para. 17.

building in the most remote, rural areas. For example, by serving just the densely-populated town in a typical rural area, rather than the sparse, outlying ranches, a PCS provider could serve well over the two-thirds of the population, while ignoring over ninety percent of the geographic area. Without the commitment to build in rural areas that rural telcos exhibit, it is highly unlikely that PCS construction in scattered regions will occur. The Commission can ensure true universal access to PCS by keeping the rural telcos' exclusive right to partitioning intact. If, and only if, a rural telephone company chooses to not serve an area, should other entities be allowed to partition.¹³ OPASTCO believes that keeping the *status quo* in partitioning will "expedite the provision of service to areas that otherwise may not receive it as quickly"¹⁴ or at all.

IV. THE TIMING OF THE PROPOSED RULE CHANGE WOULD EXCLUDE RURAL LECs FROM MEANINGFUL PARTICIPATION IN THE PROVISION OF PCS

Because changing the partitioning rules may exclude rural LECs from participation in PCS, many might consider participation in the "D, E, and F" block auction as an alternative. However, such participation is precluded because the final date to submit a short-form application on FCC Form 175 was July 29, 1996.¹⁵ In fact, the auction will have already started before there is even

¹³For example, waivers are available under the current rules.

¹⁴NPRM at para. 35.

¹⁵FCC Public Notice, DA 96-1026 (June 26, 1996).

a ruling on the proposed change.¹⁶ At best, the Commission only allowed ten working days between the release of the NPRM and the deadline for submitting FCC Form 175.¹⁷ In essence, this allowed rural LECs less than two weeks to digest and react to the NPRM's proposed rule change, change their long-term strategic plan, decide whether to file FCC Form 175, and gather capital or obtain financing. For many OPASTCO members with a strong desire to provide PCS to their rural subscribers, this was a practical impossibility. Accordingly, OPASTCO believes that the timing of the FCC's NPRM makes the rural provision of PCS less likely.

V. CONCLUSION

Many OPASTCO members have used the rural telco right to partition as an integral part of their long-term strategic planning. Having a meaningful chance at gaining PCS spectrum would allow them to provide the latest in wireless technology to the rural customers who demand it. Many rural telephone companies were left out of the "C" block auctions due to the surprisingly high bid levels, and consider partitioning as their only viable strategic option. OPASTCO believes that the exclusive right of partitioning for rural telephone companies could be the last significant chance that rural telephone companies have of effectively participating in the provision of PCS. Changing the rules now could possibly deny the rural

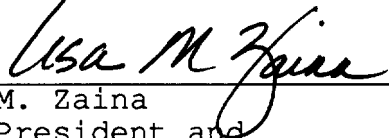
¹⁶The auction is scheduled to start on August 26, 1996 and reply comments in this NPRM are due on August 30, 1996.

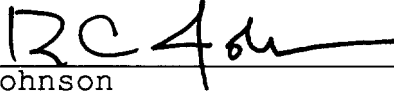
¹⁷The NPRM was released on July 15, 1996 and the application deadline was July 29, 1996.

customers of these small companies the chance to enjoy the
benefits of the latest in wireless technology.

Respectfully submitted,

**THE ORGANIZATION FOR THE
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COMPANIES**

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